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HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1101 OF 2003.

Mr. Shaikh Zahid Mukhtar.
Age: 28 yrs, r/a: H.No.786,
Dhoodh Bawdi, Narpoli,
Bhiwandi, Thane. ..Petitioner.

Versus.

1. The Commissioner of Police
Thane.
2. The Dy. Commissioner of Police,
Bhiwandi City.
3. The State of Maharashtra. ...Respondents.

Mr. Firoz A. Ansari for the petitioner.

Mr. Ravi Kadam, Advocate General with Mr. C. R.
Sonawane, A.G.P. for the State - respondent nos. 1 to 3.

CORAM: S. B. MHASE &
R.S.MOHITE, JJ.

DATE: JUNE 20, 2007.

ORAL JUDGMENT (PER R.S.MOHITE, J.)

1. The petition filed by the petitioner who claims that he is a citizen of India and an active social worker engaged in welfare activities. He files this petition for declaring and quashing the Maharashtra Animal Preservation Act, 1976 as unconstitutional. The petitioner claims in his petition that he belongs to the minority community and as such has fundamental rights guaranteed under Articles 25, 26, 27, 28, 29 & 30 of the Constitution of India. That the main Act, was violative of the petitioner's right to practice his Muslim religion. It was contended that the festival of

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Bakri-Id was celebrated each year and it was a religious obligation of the Muslims to slaughter animals such as goats, sheeps, bulls, bullocks, buffaloes, calves, bovines and camels as per the availability. That, animals such as bullocks, bulls, oxes, calves, buffaloes, bovines and camels being cheaper were animals which the Muslim community would prefer to slaughter. It was contended that the police authorities in connivance with communal forces were misusing their powers under the Acts and Rules. It was contended that the inclusive definition of the word "cow" was arbitrary, unreasonable and irrational and violative of the provisions of the Constitution of India.

. It was alleged that the members of the Muslim community were being harassed by the police who were malafidely seizing the slaughter animals at places such as Bhiwandi and Nashik Road without conducting any panchnama or lodging any FIR. That, the communal forces had obstructed the petitioners from bringing bulls or bullocks required for performing the religious slaughter which was legally permitted. That even the Prevention of Cruelty to Animals Act, 1960 provided that killing of animal in a manner provided by any religion was not an offence. It was contended that such a slaughter was required to be done in order to further trade related activities pertaining to livestock and to ensure revenue to the State and the earning of the foreign exchange for

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the country. On all these facts it was contended that the Maharashtra Animal Preservation Act, 1976 should be declared unconstitutional.

2. The issues raised in the petition are no longer res-integra. In the case of the **State of West Bengal & others v/s. Ashutosh Lahiri & Others** reported in **(1995) 1 SCC 189** a bench of three judges of the Supreme Court held that the slaughtering of cows on Bakri-Id day was an optional and not an obligatory or essential religious practice for the Muslims and that in prohibiting the slaughtering of such cows no fundamental rights of the Muslims were involved. More recently this view has been upheld by the Supreme Court in the case of **State of Gujarat v/s. Mirzapur Moti Kureshi Kassab Jamat and others** and connected matters decided together by the Apex Court in a judgment reported in **(2005) 8 SCC 534**. The said judgment was delivered by the constitutional bench of the Apex Court which was considering the Bombay Animal Preservation (Gujarat Amendment) Act 1994, after the enactment of which there was a complete and total ban on the slaughtering of cows, bulls and bullocks. The Apex Court upheld even such a total prohibition imposed by the State of Gujarat. While doing it, the Court held that it reiterated the position earlier stated by the Supreme Court that slaughtering of cows on Bakri-Id was neither an essential nor necessary part of any religious

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ceremony of Muslims. That an optional religious practice was not covered by Article 25(1) of the Constitution of India. It was however argued by the Advocate for the petitioner that this judgment did not fully consider the question relating to the rights Article 25(1) and left this question open.

. We called upon the Advocate for the petitioner to show us any verse in the Quran which makes it mandatory for a Muslim to sacrifice a cow. The petitioner's Advocate was unable to do so. No material is placed before us to say that this is a mandatory practice. As stated above, in fact it has been held by the Apex Court that it is optional.

3. In the State of Maharashtra, unlike the State of Gujarat, there is no total ban on the slaughter of adult male cows (bulls and bullocks). The ban is restricted to "cows" which are defined under section 3(b) as under:

"Cow includes a heifer or male or female calf of a cow."

. The dictionary meaning of the term "heifer" is a cow which has given birth to not more than one calf. Similarly, the dictionary meaning of the word "calf" is an animal which is not more than one year old.

4. Under section 5 of the impugned Act there is a complete ban on the slaughter of "cows" in the State of Maharashtra. The adult male of the species, i.e., bulls and bullocks (castrated cows) are animals which along with other bovines such as female buffaloes and buffalo calves are included in the Schedule. The scheduled animals can be slaughtered subject to restrictions contained in section 6 of the impugned Act. The said provisions provide that the person intending to slaughter any scheduled animal should obtain a certificate from the competent authority. It further provides that no certificate shall be granted under sub-section (1) if in the opinion of the competent authority, (a) the scheduled animal, whether male or female, is or is likely to become economical for the purpose of draught or any kind of agricultural operations; (b) the scheduled animal, if male, is or is likely to become economical for the purpose of breeding; (c) the scheduled animal, if female, is or is likely to become economical for the purpose of giving milk or bearing off spring.

5. In the State of Maharashtra, the restrictions on the slaughter of such animals are not as stringent as the restrictions in the State of Gujarat. In the State of Gujarat not only is there a complete prohibition on the slaughter of cows but unlike the State of

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Maharashtra there is a complete prohibition on the slaughter of bulls and bullocks. Thus in the State of Maharashtra, the restrictions are less stringent and the complete ban covers females in the category of cows in all ages as well as male calves. Even the more stringent provisions in the laws prevalent in the State of Gujarat have been upheld by the Constitution bench of the apex Court. In the aforesaid facts, we find no substance in the petition and rule granted in the same is required to be discharged. Rule is discharged accordingly.

(R.S.MOHITE, J.)

(S.B.MHASE, J.)